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Of Attorney's for Creditor Lisa J. Woodard

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re:)	Case No. 14-32050-elp13
)	
MICHAEL MADISON O'NEILL,)	OBJECTION TO DEBTOR'S
)	CHAPTER 13 PLAN
)	
)	
Debtor.)	
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Lisa J. Woodard, formerly Lisa J. O'Neill, is the Debtor's former spouse.

Ms. Woodard objects to Debtor's Chapter 13 Plan (the "Plan") based on the following:

1. On November 2, 2012, an equalizing General Judgment and Money Award was entered in Multnomah County Circuit Court Case No. 1201-60228, awarding Ms. Woodard the principal amount of \$70,000.00, plus interest at the rate of nine percent (9%) per annum from the date the judgment was entered until fully paid (the "Equalizing Judgment"). A copy of the Equalizing Judgment is attached as Exhibit 1.

2. The Equalizing Judgment is a lien against the Debtor's real property. The Equalizing Judgment additionally directed that the parties were to immediately list and sell the real property which consisted of the family home located at 8044 NE Glisan Street, Portland, Oregon, and commercial real property located at 601 NE 73rd, Portland, Oregon, and that the parties were directed to cooperate with the sale.

3. Despite demand therefore, Debtor has failed and refused to sell or refinance the commercial real property in accordance with the Equalizing Judgment in order to fulfill the Debtor's payment obligations to Ms. Woodard and satisfy the Equalizing Judgment. Debtor has been in default of his obligation to sell or refinance the commercial real property and satisfy Ms. Woodard's Equalizing Judgment since January 14, 2013.

4. On October 28, 2013 Ms. Woodard caused a Writ of Execution to be issued directing the Sheriff of Multnomah County, Oregon to sell the commercial real property. Copies of the papers setting forth the balance due Ms. Woodard are attached as Exhibit 2. The sums due Ms. Woodard exceeds \$79,251.44 as of May 15, 2014 with interest accruing at the Equalizing Judgment rate of nine percent (9%) per year (per diem \$17.26).

5. Paragraph 2(b)(1) of the Debtor's Chapter 13 Plan provides for monthly payments to Ms. Woodard on account of her secured claim in the amount of \$200 each month (after payment of arrearages to Multnomah County for real property taxes on the commercial real property). Such monthly payments totaling \$2,400 per year do not pay the annual interest accruing on Ms. Woodard's secured claim in excess of \$6,300 per year.

6. At the meeting of creditors conducted pursuant to Section 341(a) on May 6, 2014, the Debtor stated he would begin to seek a refinance of the commercial real property in order to pay Ms. Woodard's secured claim on the forty-eighth (48th) month of his sixty (60) month Chapter 13 Plan. There is no such provision in the Plan as filed, however, the Chapter 13 Trustee's representative at the meeting of creditors required a new Paragraph 12 be added to the Plan calling for payment of Ms. Woodard's secured claim (and that of another lien creditor—the Debtor's former divorce lawyer—when added to Ms. Woodard's claim total in excess of \$175,000).

7. Ms. Woodard objects to confirmation of any Plan that does not give full faith and credit to the terms of the Equalizing Judgment under which the Debtor is in default for more than a year by requiring the *immediate* sale of the commercial real property to satisfy Ms. Woodard's secured claim. Ms. Woodard also objects to the monthly plan payments that will cause her secured claim to grow each month and she is also seeking relief from the automatic stay and requesting that the court to allow her to pursue her Writ of Execution and sale of the commercial real property in state court.

Dated this 15th day of May, 2014.

TARLOW NAITO & SUMMERS, LLP

s/Brent G. Summers

Brent G. Summers, OSB No. 824060
Of Attorneys for Creditor Lisa J. Woodard

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing OBJECTION TO DEBTOR'S
CHAPTER 13 PLAN by the following indicated method or methods:

☒ by electronically serving through the **ECF/CM** system, a true and correct copy to all attorneys registered to receive electronic service in this case.

☐ by **email** of a, true and correct copy to the attorney(s) listed above, at:

DATED: May 15, 2014.

TARLOW NAITO & SUMMERS, LLP

s/Brent G. Summers
Brent G. Summers, OSB No. 824060
Of Attorneys for Creditor Lisa J. Woodard

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Department of Domestic Relations

In the Matter of the Marriage of:)	
)	
LISA J. O'NEILL,)	
)	No. 1201-60228
Petitioner,)	
)	GENERAL JUDGMENT OF
and)	DISSOLUTION OF MARRIAGE,
)	MONEY AWARD FOR CHILD
MICHAEL MADISON O'NEILL,)	SUPPORT AND DIVISION OF
)	PROPERTY
<u>Respondent.</u>)	

This matter came before the court based on the files and documents submitted herein and on the stipulation of the parties for the entry of a general judgment dissolving this marriage. Petitioner is represented by Robert Demary of Gevurtz, Menashe, Larson & Howe, P.C. Steven Allen Smith, of Steven Allen Smith, P.C. represented Respondent. The court having been presented with this form of General Judgment of Dissolution of Marriage, having reviewed the records and documents on file herein, and being fully advised in the premises, makes the following findings:

1. There exist between Petitioner and Respondent irreconcilable differences which have caused the irremediable breakdown of their marriage.
2. The court has jurisdiction over Petitioner and Respondent.

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1 2.1 There is no other domestic relations suit or support petition pending between the
2 parties in this or any other state.

3 2.2 Both parties have been residents of and domiciled in the state of Oregon
4 continuously for six months immediately prior to the filing of the petition for dissolution of
5 marriage.

6 2.3 Oregon is the home state of the minor children. They have lived in Oregon with
7 Petitioner and Respondent in the last 5 years and in no other state. No other person claims
8 parental rights. No other state would have jurisdiction.

9 2.4 Respondent was personally served a Summons and Petition for Dissolution and he
10 has appeared in this case.

11 3. Statistical information:

12 Date and Place of Marriage: 1995 in Portland, Oregon

13	PETITIONER:	Lisa J. O'Neill
14	Former Name(s)	UTCR 2.130
14	Age	47
15	Date of Birth	UTCR 2.130
15	Residence	911 SE 122 nd #8, Portland, OR 97220
16	Social Security No.	UTCR 2.130
17	Employer	
17	Drivers License	UTCR 2.130
18	RESPONDENT:	Michael Madison O'Neill
19	Former Name(s)	N/A
19	Age	48
20	Date of Birth	UTCR 2.130
20	Residence	132 NE 57th , Portland, OR 97213
21	Social Security No.	UTCR 2.130

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1 Employer O'Neills Tools
2 Drivers License UTCR 2.130

3 4. Two children were born of this marriage, namely: Alexis O'Neill born February 6,
4 2000 and Amanda O'Neill, born February 8, 2002.

5 4.1 The parties stipulated that Mother would have legal and physical custody of the
6 children.

7 5. Wife is not now pregnant.

8 6. For child support purposes the relevant facts are: The children do not receive state
9 assistance and the state has no assigned rights in this case. The children will be residing with
10 Mother. Father's gross monthly income is \$2,000 per month. Mother's gross monthly income is
11 imputed to be the minimum wage \$1,525. Mother has no work related daycare costs. Mother
12 has the right to elect whom of the parties will provide health insurance for the children. Mother
13 elects to have Mother maintain health insurance for the children through the Oregon Plan. The
14 children are presently receiving health insurance on the Oregon Plan at no cost to the parties.
15 The children have uninsured health expenses that exceed \$250 per year, per child due to
16 counseling expenses for the children. Neither party has health or life insurance. No other facts
17 are relevant to the determination of child support under the uniform support guidelines.

18 6.1 There is no reason to rebut the presumptively correct level of support. The child
19 support calculation is attached to this general judgment as Exhibit 1, and by this reference
20 incorporated herein.

21 6.2 The parties have entered into a written agreement allowing that wage-withholding

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1 proceedings not be initiated against Father at this time for good cause: Father currently owes no
2 child support arrearage to Mother and Father has not been late in paying child support payments
3 to Mother. Father understands that Mother retains the right to seek a wage-withholding order
4 upon Mother's ex-parte request against Father without advance notice to Father, or the need for a
5 judicial or an administrative hearing if Father fails to make payments at least equal to the amount
6 of support payable for one month, as per ORS 25.378 and ORS 25.396.

7 6.3 Over the past 5 years, the parties have averaged \$21,859 in income. This income
8 does not justify spousal support.

9 7.1 Husband and Wife each warrant that they have disclosed all of their assets and
10 obligations within their knowledge, that they are referred to within this document in Exhibit 2
11 and that they have reasonably stated the value of any assets and the amount of any obligation.
12 The parties state they have not transferred or placed in the hands of any other person under
13 express or implied agreement, trust or understanding, any asset of the parties without full
14 disclosure each to the other within this document.

15 8. The children have been emotionally abused by being overly involved in the
16 divorce process.

17 **IT IS HEREBY ORDERED** that:

18 1. **DISSOLUTION OF MARRIAGE.** The marital status of the parties is hereby
19 terminated. The provisions of this general judgment are effective immediately.

20 1.1 **EFFECT ON WILLS.** Any provision in a party's will which is now in force and
21 effect which benefits the now former spouse shall be deemed revoked. This revocation shall

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1 cause the will to be interpreted as if the former spouse did not survive the testator, unless
 2 reaffirmed in writing after the effective date of this Judgment. ORS 112.135.

3 1.2 **EFFECT ON TRUSTS.** Any provision in any trust created by or for the benefit
 4 of a party which is now in force and effect which benefits the now former spouse shall be
 5 deemed revoked, and the trust shall be interpreted as if the former spouse did not survive the
 6 decedent, unless reaffirmed in writing after the effective date of this *Judgment*.

7 1.3 **EFFECT ON BENEFICIARY STATUS.** Any designation of the now former
 8 spouse as a beneficiary of any benefit is hereby revoked, except as designated in this General
 9 Judgment. This revocation of beneficiary status includes any designation made before or on the
 10 date of this judgment. This revocation of beneficiary status includes all possible designations,
 11 for example and without limitation, retirement benefits, IRA accounts, life insurance policies,
 12 annuities, or other assets where a party is able to designate a beneficiary to receive the proceeds
 13 of that asset upon the death of that party. The benefit shall be paid to the secondary or contingent
 14 beneficiary or, if no beneficiary is named, then to the decedent's estate. The surviving former
 15 spouse shall cooperate with the decedent's estate in assuring this directive is completed,
 16 specifically including the affirmative responsibility to disclaim, in writing, and within nine
 17 months of the date of death to assure that the surviving former spouse does not receive any
 18 benefit as a result of the decedent's failure to modify the beneficiary designation of the asset.

19 *NOTE: The foregoing provision may not apply to certain employment-related benefits covered by the*
 20 *Employee Retirement Income Security Act of 1974 (ERISA).*

21 1.4 **EFFECT ON SURVIVORSHIP INTERESTS.** Any survivorship interest or future

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1 expectancy interest which a party may have arising from an asset awarded to or in the name of the other
 2 party is hereby revoked as of the date of this *Judgment* unless specifically ordered otherwise herein.

3 2. **CHILD CUSTODY.** Mother shall have sole legal and physical custody of the
 4 minor children, subject to Father's parenting time.

5 2.1 **PARENTING TIME.** The children need substantial therapeutic treatment
 6 primarily to re-establish a relationship with Father, but also to address other emotional and
 7 psychological issues. The children's therapy will be addressed by Dr. Wendy Bourg through the
 8 therapeutic parenting time set forth herein. Father shall have parenting time according to the
 9 schedule to be determined by Dr. Wendy Bourg. Dr. Bourg shall be in charge of the children's
 10 therapy and shall coordinate their individual therapy with any separate therapists currently being
 11 used or therapists engaged in the future until Dr. Bourg's therapy is concluded. Both parties shall
 12 cooperate fully with the terms of therapy as directed by Dr. Bourg. Full cooperation includes,
 13 without limitation, following Dr. Bourg's directions for care of the children between therapeutic
 14 sessions, obeying the Restraint set forth below, providing immediate and full information about
 15 existing and future therapists and therapies, scheduling each therapy session, timely transporting
 16 the children to and from each therapy session, and cooperating fully in scheduling, participating
 17 in each therapeutic session and payment of Dr. Bourg's billing statements within 30 days of
 18 billing. Each party shall pay Dr. Bourg directly for their separate visits with Dr. Bourg. Each
 19 party shall pay one half of Dr. Bourg's fees for the children's therapeutic visits by making
 20 payment directly to Dr. Bourg. The initial payments may need to be made from the proceeds of
 21 the first sale of real property. Failure to cooperate fully may be prosecuted as a contempt of

1 court. Mother shall schedule appointments for the children with Dr. Bourg as Dr. Bourg directs.
2 Mother shall bring the children to the scheduled meetings with Dr. Bourg so that they arrive at
3 the time set and Mother shall pick the children up after therapeutic parenting time. The attorneys
4 for the parties shall be provided with reports updating the developments of the therapeutic
5 treatment, especially noting milestones indicating changes in the nature of the parenting time and
6 not less than every six months.

7 **2.2 RESTRAINT.** Both parties shall take personal responsibility for the behavior of
8 themselves and others in the presence of the minor children. Each parent will restrain themselves
9 and will remove a child from any situation in which others do any of the following:

10 **2.2.1 DEROGATORY COMMENTS.** Making any derogatory comments about the
11 other parent to a child or while the child is in that parents care and the child is within the
12 structure in which the conversation is occurring, or when outside of a structure, within 150 feet
13 (50 yards or one half of a football field) of the child. Derogatory comments includes acting in
14 any way to diminish the love, respect and affection that a child has for either parent.

15 **2.2.2 CHILD AS MESSENGER.** Using or responding to the child as a messenger of
16 communications to the other parent or receiving or making use of messages communicated by the
17 child.

18 **2.2.3 HARASSMENT.** Harassing the other parent.

19 **2.2.4 DISCUSSIONS IN THE CHILD'S HEARING.** Having substantive
20 discussions between the parties in the presence or hearing of the child. Substantive
21 conversations shall take place by telephone outside of the hearing of the child, when the child is

1 not present or has gone to sleep. While in the presence of a child of this marriage, the parties
 2 shall not discuss parenting time arrangements, support, or the conduct or activities of either
 3 parent. No discussions shall occur during the parting time at pick up or delivery of the child
 4 except greetings, pleasantries of the day, or discussions of the child's current immediate physical
 5 or emotional well being essential to the child's care that have occurred within twenty-four hours
 6 and cannot adequately be communicated telephonically before or after pick up. The parent
 7 having information to impart or obtain from the other parent will call and communicate with the
 8 other parent either before or after the exchange of the child at a time when the child is likely to be
 9 in bed asleep.

10 **2.2.5 QUESTIONING THE CHILD ABOUT THE OTHER PARENT.** Question a
 11 child for information about the child's household, the activities of the other party or to gather
 12 information about the child's care, location, provisions or schedule. All such information must
 13 be discussed directly between the parents. Both parents will support the child's relationship with
 14 the other parent. When the child voices discomfort, upset or any kind of problem with the other
 15 parent, the parent receiving the message will: (1) comfort the child's emotional upset and
 16 encourage her to talk about her feelings; (2) encourage the child to talk to the other parent and to
 17 work it out with the other parent; (3) reassure the child that the other parent loves her and will
 18 listen and be fair and kind to her and take her feelings and needs into account; (4) call the other
 19 parent and inform them of the nature of the child's feelings, complaint and upset.

20 **2.2.6 EXCHANGE OF THE CHILD.** The parent picking up or delivering the child
 21 shall remain in the vehicle and shall require any passengers in the car to remain in the vehicle.

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1 2.2.7 **USE OF INTOXICANTS.** Both parents are restrained from use of illegal drugs
2 or consumption of alcohol so as to exceed the legal driving limit during their parenting time.

3 2.3 **PARTICIPATION IN ACTIVITIES.** Both parents shall have the right to
4 participate individually in any school conferences he or she may wish and shall also have the
5 right to attend any school functions and otherwise participate in the child's educational program.
6 However, Father shall not attend the children's activities until given written direction by Dr.
7 Wendy Bourg.

8 2.4 **MODIFICATION OF PARENTING TIME.** Although the parties may agree
9 orally to any changes, such changes continue only so long as the agreement continues. Upon
10 disagreeing, the terms set forth above continue to direct the parties' parenting time. No
11 permanent modification of these specific parenting time conditions can occur unless such
12 modifications are in the form of an order signed by the Court.

13 2.5 **RETENTION OF CASE.** Judge Kurshner shall retain this case to assure that the
14 parenting plan is given effect and modified as needed.

15 3. **PARENTAL AUTHORITY.** Each parent shall continue to have the following
16 authority, to the same extent as the other parent has:

17 3.1 To inspect and receive school records, and to consult with school staff concerning
18 the child's welfare and education.

19 3.2 To inspect and receive governmental agency and law enforcement records
20 concerning the child.

21 3.3 To consult with any person who may provide care or treatment for the child and to

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